## REMARKS

**Claim 1 was rejected under 35 U.S.C. § 102 for lack of novelty "as being clearly anticipated by Goldberg (U.S. 4,603,489) and anticipated by Brown (U.S. 5,361,511)."[1] Rejection under 35 U.S.C. § 102 is traversed.**

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc., 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003)*; *Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002)*. In imposing a rejection under 35 U.S.C. § 102 the Examiner is required to **specifically identify** where an applied reference is perceived to **identically** disclose **each and every** feature of a claimed invention. *In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993)*; *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984)*. That burden has **not** been discharged. Indeed, there is a significant difference between the claimed dryer and the dryer disclosed by each of Goldberg and Brown that scotches the factual determination that either Goldberg or Brown disclose a dryer identically corresponding to that claimed.

[1] During a telephone communication on May 27, 2005, Examiner Gravini confirmed that claim 1 was rejected under 35 U.S.C. § 102 for lack of novelty based upon each of Goldberg and Brown.

Specifically, the claimed invention is directed to a dryer which comprises, *inter alia*, **blowing means positioned in an air circulation path between the gas cooler and evaporator**. No such structure is disclosed or suggested by either of the applied references.

**Goldberg**

It is not apparent and the Examiner did **not**, as judicially required, specifically identify where Goldberg discloses or suggests a dryer as claimed comprising, *inter alia*, **blowing means positioned in a air circulation path between a gas cooler and evaporator**. Indeed, Goldberg does not disclose a dryer comprising, *inter alia*, blowing means positioned in an air circulation path between a gas cooler and evaporator. Applicants note that neither blower 15 nor blower 24 is positioned in a air circulation path between any gas cooler and evaporator.

**Brown**

Brown neither discloses nor suggests a dryer as claimed comprising, *inter alia*, **blowing means positioned in an air circulation path between a gas cooler and evaporator**. The condenser and evaporator identified by the Examiner (Fig. 2 of Brown) is a closed refrigerant path with expansion valve 64 therebetween. The only disclosed blowing means are fans 46 and 48. But fans 46 and 48 are external to this refrigerant path and are not provided in "an air circulation path between the gas cooler and the evaporator", as claimed.

The above **structural difference** between the claimed dryer and the dryer disclosed by each of Goldberg and Brown undermines the factual determination that each of Goldberg and Brown discloses a dryer identically corresponding to that claimed. *Minnesota Mining &*

*Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc., 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992)*; *Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986)*. Applicants, therefore, submit that the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by each of Goldberg and Brown is not factually viable and, hence, solicit withdrawal thereof.

**Claims 2 and 3 were rejected under 35 U.S.C. § 103 for obviousness predicated upon Giovanni in view of Ebara.**

This rejection is traversed as factually and legally erroneous.

Initially, the Examiner states that Giovanni discloses the claimed invention "... as discussed in the anticipatory rejection above ...." However, Giovanni was **not** applied under 35 U.S.C. § 102 in this Office Action . The Examiner may have intended to rely upon Goldberg or Brown in view of Ebara. If such was the Examiner's intention, Applicants incorporate the arguments previously advanced in traversing the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by each of Goldberg and Brown. Specifically, neither Goldberg nor Brown discloses or suggests a dryer comprising, *inter alia*, blowing means positioned in an air circulation path between a gas cooler and evaporator. The secondary reference to Ebara does not cure the previously argued deficiencies of Goldberg or Brown. Accordingly, even **if** the applied references are combined as suggested by the Examiner, and Applicants do **not** agree that the requisite fact-based motivation has been established, the claimed invention would **not** result. *Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988)*.

To whatever extent the Examiner may have intended to rely upon Giovanni, as pointed out in the responsive Amendment submitted September 14, 2004, Giovanni neither discloses nor suggests a dryer structured so that the blowing means is positioned in an air circulation path between the gas cooler and evaporator. Indeed, in Giovanni's dryer, blowing means 15 is not positioned between gas cooler 12 and evaporator 14, as clearly shown in Fig. 1 of Giovanni. As previously pointed out, the secondary reference to Ebara does not cure this argued deficiency of Giovanni. Accordingly, even **if** Giovanni's dryer is modified as suggested by the Examiner in view of Ebara, and Applicants do **not** agree that the requisite fact-based motivation has been established, the claimed invention would not result. *Uniroyal, Inc. v. Rudkin-Wiley Corp., supra.*

Further, **Applicants separately argue the patentability of claim 2** which specifies a $CO_2$ refrigerant. Applicants would stress that when employing a $CO_2$ refrigerant, the temperature of the circulating air becomes very high and, hence, the temperature of the blower when driven will be high. In accordance with the present invention, the blower can be cooled effectively by the air from the evaporator, thereby preventing the blower from over heating. Thus, the use of $CO_2$ exacerbates a problem addressed and solved by the claimed invention. This problem is not even on the radar screens of the applied references. Under such circumstances, the **problem** addressed and solved by the claimed invention merits consideration as a potent indicium of **nonobviousness**. *North American Vaccine, Inc. v. American Cyanamid Co., 7 F.3d 1571, 28 USPQ2d 1333 (Fed. Cir. 1993)*; *Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990)*; *In re Newell, 891 F.2d 899, 13 USPQ2d 1248 (Fed. Cir. 1989)*; *In re Nomiya, 509 F.2d 566, 184 USPQ 607 (CCPA 1975).*

Based upon the foregoing it should be apparent that a *prima facie* basis to deny patentability to claims 2 and 3 under 35 U.S.C. § 103 has not been established. Moreover, upon

giving due consideration to the problem addressed and solved by the claimed invention, the conclusion appears inescapable that one having ordinary skill in the art would **not** have found the subject matter of claims 2 and 3 **as a whole** obviousness within the meaning of 35 U.S.C. § 103. *Jones v. Hardy, 727 F.2d 1524, 220 USPQ 1021 (Fed. Cir. 1984).*

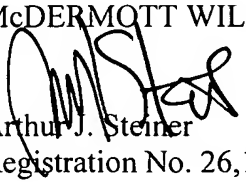
Applicants, therefore, submit that the imposed rejection of claims 2 and 3 under 35 U.S.C. § 103 for obviousness predicated upon Giovanni in view of Ebara, or either Goldberg or Brown in view of Ebara, is not factually or legally viable and, hence, solicit withdrawal thereof.

Based upon the foregoing it should be apparent that the imposed rejections have been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



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